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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/470,452	12/22/1999	JOHN G. POSA	POS-01102/29	6162

7590

06/27/2002

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EXAMINER

VO, HAI

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/27/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

MF-7

**Office Action Summary**

Application No.

09/470,452

Applicant(s)

POSA ET AL.

Examiner

Hai Vo

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 9-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art of figure 1 as admitted by the Applicant on page 5, lines 11-15 of the present invention (herein after referred to as the admitted prior art) in view of Heilman et al (US 5,474,194). The admitted prior art discloses a conventional packing tape meeting all the limitations of structure and chemistry of the claimed subject matter except an edge of the tape that becomes visibly apparent when the tape is cut or torn. Heilman discloses a color change system including a brittle layer **44** formed of a flexible material and being colored with a fluorescent dye and a bonding layer **42** that bonds the brittle layer to the background coating **40** (figure 5, column 3, lines 33-48, and column 4, lines 1-10). The examiner interprets that the brittle layer of Heilman is simply analogous to the backing layer of the conventional tape whereas the bonding layer of Heilman is comparable to the adhesive layer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a fluorescent dye into the backing layer of the conventional packing tape motivated by the desire to generate an irreversible color

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change at the edge of the tape when the backing layer fractures due to a mechanical action.

With regard to claim 10, the admitted prior art discloses the conventional packing tape having the backing layer and adhesive being transparent (page 5, line 13 of the specification).

With regard to claims 12, 14, 15, and 17, none of the cited prior art discloses that a plurality of microcapsules release the fluorescent material when the backing layer fractures, as well as the optical density, and the wavelength changing properties of the fluorescent material. However, since the color change is generated when the backing layer of the admitted prior art as modified by Heilman has fractured and Applicant is using the same fluorescent dye as the admitted prior art as modified by Heilman in the backing layer, it is the examiner's position that the plurality of microcapsules, optical density and wavelength changing properties of the fluorescent material would be inherently present.

3. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art of figure 1 as admitted by the Applicant on page 5, lines 11-15 of the present invention (herein after referred to as the admitted prior art) in view of Heilman et al (US 5,474,194) as applied to claim 1 above, further in view of Powell et al (US 3,819,398). The combination of the primary and secondary references is silent as to the microcapsules that are capable of releasing the fluorescent material when the backing layer fractures. Powell teaches a fluorescent dye in form of the microcapsule being employed in an adhesive tape (column 1, lines 11-22). It would

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have been obvious to one having ordinary skill in the art at the time the invention was made to employ a fluorescent dye in form of a microcapsule into the backing layer motivated by the desire to provide a color change at the edge of the tape upon destruction of the microcapsules when the backing layer has fractures.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 9-19 have been considered but are moot in view of the new ground(s) of rejection.
5. The art rejections in Paper no. 5 have been overcome by the present response.


### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Monday to Friday, 8:30 to 5:00 (EAST). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HV  
June 17, 2002



TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
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